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UNITED NATIONS UPDATE

UN ADOPTS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

After more than 20 years of deliberation and negotiation, the United Nations (UN) General Assembly voted to adopt the Declaration on the Rights of Indigenous Peoples (the Declaration) on September 13, 2007. The Declaration expands the concept of individual rights to encompass collective rights and condemns the discrimination of the world's 370 million indigenous people by ensuring their right to remain distinct in their culture and identity.

The Declaration was adopted by a majority vote of 144 Member States, with 11 abstentions and four states — Australia, Canada, New Zealand, and the United States — voting against. The governments of these four states, which all have large indigenous populations, view the Declaration as being incompatible with many of their own laws. In particular, state representatives are concerned with Article 8 of the Declaration. This article protects indigenous people from assimilation by opposing actions that could dispossess them of their land or deprive them of their “integrity as distinct peoples.” For example, Canada, according to a joint statement from the Canadian ministries of Indian and Foreign Affairs, claims to support the spirit of the Declaration but fears that such provisions are “fundamentally incompatible with Canada’s constitutional framework.” The Declaration is currently non-binding, although many indigenous rights activists expect that the international community will move to adopt it as a convention within the next few years, adding it to the canon of binding international law. As a convention, the document would be more likely to influence court decisions regarding indigenous peoples, such as conflicts over land and issues of restitution in the United States and Canada.

States resisting adoption of the Declaration also fear economic loss. The Declaration discourages corporations from investing and makes some lands unavailable for development projects. Opponents are also concerned that the Declaration’s

support for compensation for lands taken or destroyed, allowed under Article 8, will have additional economic effects. Other provisions may conflict with states’ and corporations’ abilities to acquire property through the forcible removal of indigenous people from land. Article 10 requires “the free, prior and informed consent of the indigenous people concerned” for these people to be removed from their lands. Opponents are concerned with potentially adverse corporate reactions to such additional hurdles.

The controversy surrounding the Declaration mirrors the ongoing conflict between economic and cultural interests. The involvement of indigenous peoples’ representatives in the process of drafting and adopting the Declaration reflects growing recognition within the international community of indigenous peoples’ particular rights and needs. One of the Declaration’s original drafters has stated that its adoption shows that, “the international community is finally recognizing that indigenous peoples have a permanent right to exist as distinct peoples.” The Declaration, however, must overcome resistance from states like the United States, which fears the Declaration’s potential effects on federal policies affecting the more than 560 Indian nations within its borders.

Secretary-General Ban Ki-moon greeted adoption of the Declaration with praise. He said that the adoption “marks a historic moment when UN Member States and indigenous people reconciled with their painful histories and resolved to move forward together on the path of human rights, justice and development for all.” The UN appears committed to the idea that this path includes the recognition of indigenous peoples’ rights under international law.

UN RESPONDS TO CRISIS IN BURMA

The recent arrests of dissidents participating in pro-democracy marches in Burma, known by its ruling government and the UN as Myanmar, prompted Secretary-General Ban Ki-moon to send a Special Envoy to meet with the state’s top

military leaders early this October. This envoy will later brief the Security Council on the situation in that state.

The current dynamic between the United States, and Russia and China regarding the Burma situation continues to cause conflict within the Security Council. The United States has been pushing for sanctions intended to exert pressure on the ruling junta to cease crackdowns on pro-democracy demonstrations and release political prisoners. Russia and China have historically opposed sanctions because both states have regional and economic interests in maintaining stable relationships with Burma’s leaders. Without China and Russia’s support, the UN is unlikely to adopt sanctions. Furthermore, sanctions would be ineffective if Burma could still rely on Russia and China as trading partners.

The Secretary-General’s desire to foster human rights in Burma is strengthened by support from the Association of Southeast Asian Nations (ASEAN) of which Burma is a member. ASEAN’s support gives extra force to the possibility of UN sanctions. It remains unclear whether ASEAN’s support for sanctions is enough to overcome continued resistance from Russia and China.

The UN Special Envoy to Myanmar Ibrahim Gambari expressed the international community’s concern with recent clashes in Burma in a meeting with Senior General Than Shwe, dictator of the state’s ruling military junta. After this meeting the government eased restrictions and released more than 2,000 detained monks and laypersons. These small steps, however, are unlikely to overcome Burmese discontent with years of military rule and the resulting poor socio-economic conditions. Furthermore, the release of prisoners might encourage China to adopt the position that the government is acting reasonably, lending force to its resistance to further UN actions.

Mr. Gambari has emphasized that serious progress on human rights cannot be made until the economic situation improves

and political suppression is relaxed. He also encouraged sustained regional involvement with the UN to address the root causes of unrest. The Security Council has responded by urging the Myanmar government and its opposition to work quickly towards reconciliation. To help with this process, the UN dispatched Mr. Gambari to several regional states, including China, to continue developing a consensus committed to working for peace in Burma. Mr. Gambari was also invited to return to Burma this November. Additionally, the UN independent human rights expert on Myanmar will visit Burma to verify and report on alleged abuses during the government crackdown. The effectiveness of such steps remains to be seen, but the currently the UN appears to have put its faith in diplomacy rather than sanctions to encourage Burmese liberalization and reconciliation.

WORKING GROUP CRITICIZES BLACKWATER SHOOTINGS IN IRAQ

The UN Working Group on the Use of Mercenaries (the Working Group) expressed serious concern over the killing of ten Iraqi civilians by private security employees. The International Convention against the Use, Recruitment, Financing and Training of Mercenaries (the Convention) entered into force in 2001 and obligates states to regulate and control the use of private military forces around the world. The recent killings in Iraq have drawn

attention to the increased use of private security forces.

The Working Group's statement expresses many major concerns related to the use of private security forces and exemplifies the international community's desire to regulate their use. The statement criticizes the use of bilateral government agreements giving private forces immunity from prosecution for their actions. This immunity circumvents the Convention's authority and weakens enforceability of its provisions. The Working Group calls on Member States to accede to the Convention, to avoid granting immunity to private forces, and to create internal monitoring mechanisms to ensure that these forces do not violate human rights.

The privatization of security and military forces is one of the most divisive and controversial developments associated with economic globalization. Even some proponents worry that the growing use of these forces represents a decline of traditional nation-state sovereignty. For years, private security forces have been involved in conflicts in Africa and Eastern Europe. Their reach has now increased, however. Private forces have even taken part in emergency relief programs in the United States.

The private security firm Blackwater is seeking to diversify its business by reaching out to U.S. state and local governments

that may lack infrastructure or capacity to respond to natural disasters and terrorist attacks. Blackwater, which contracted to provide relief services in New Orleans following 2005's Hurricane Katrina, was lauded for its effectiveness but condemned for its expense. Critics also point out that using private firms to carry out traditional government functions carries an appearance of vigilantism and could foster a perception that the U.S. government pays contractors to do its job, whether by preference or necessity. This same perception pervades reactions to U.S. use of private forces in Iraq.

The recent killings in Iraq and the Working Group's response focus international attention on this debate. The potential for human rights violations during conflict or natural disasters is high. The Working Group and other opponents of private forces assert that the lack of oversight and accountability of these forces makes them more likely to violate human rights than traditional government actors are. Opponents see stripping these forces of the immunity currently afforded them as one way to reduce this potential. **HRB**

Brent D. Hessel, a J.D. candidate at the Washington College of Law, covers the United Nations for the Human Rights Brief.

ENDNOTES: REFLECTIONS ON THE JUDGMENT OF THE INTERNATIONAL COURT OF JUSTICE IN BOSNIA'S GENOCIDE CASE AGAINST SERBIA AND MONTENEGRO *continued from page 6*

50 *Bosnian Genocide*, 2007 I.C.J. at ¶¶ 374-375.

51 *See supra* n. 5.

52 *Bosnian Genocide*, 2007 I.C.J. at ¶¶ 447-449.

53 Under Article 94(2) of the ICJ's Statute, a prevailing State may request the Security Council's assistance in enforcing the Court's orders. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, *supra* n.

25, art. 94(2). Thus, Bosnia and Herzegovina could also use the judgment in an effort to get the United Nations Security Council to enforce the ICJ's order.

54 *See* United Nations Security Council Resolution 1503, S/RES/1503, operative ¶ 7, 28 August 2003.